

REMARKS

This responds to the Office Action mailed on December 31, 2007.

No claims are amended, no claims are canceled, and no claims are added; as a result, claims 16-39 stand pending in this application.

§103 Rejection of the Claims

Claims 16-39 were rejected under 35 U.S.C. § 103(a) as being unpatentable over Padgett et al. (U.S. 6,167,518, hereinafter “Padgett”) in view of Archibald et al. (U.S. 5,825,883, hereinafter “Archibald”).

For the reasons that will be set forth below, Applicant respectfully submits that this rejection is improper, and the identified claims are non-obvious over Padgett and Archibald, and are therefore allowable. Rejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness.¹

Claim 16 recites, in pertinent parts:

“comparing the first computer fingerprint file, identifying the user computer, against a second computer fingerprint file, to verify the user computer, the second computer fingerprint file accessible by the verification computer, said second computer fingerprint file including at least one identifying characteristic of a user computer; sending at least one verification response to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file and upon the comparing of the first identification for the user against the second identification for the user.”

(Emphasis added throughout)

The Office Action, at page 3, first paragraph, concedes that these limitations are not disclosed by Padgett. However, the Office Action in rejecting claim 16, while discussing these limitations, relies on Archibald and alleges that the limitations are “generally disclosed by figure[s] 2 and 16, at column 6, line 36 states use of “meter identification code”.” Applicant

¹ *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)

respectfully disagrees with the allegation. Archibald is directed to “a method and apparatus that accounts for usage of digital applications . . . and monitors when the digital application is invoked for usage.”² Figure 2 in Archibald illustrates a schematic block diagram of payment distribution. More specifically, Figure 2 shows a meter module having a meter data file including a meter I.D. and a user I.D.. Figure 16 in Archibald illustrates a logic diagram for generating a meter data file. According to the logic diagram, Archibald’s system receives “digital application ID and a publisher ID” and “request a user system ID and user acct ID” to “create user record by storing user system network ID and acct ID” and to “create publisher record,” and “to generate usage message and send usage message.” Archibald at col. 6 line 36 states, “data file 86 stores a meter identification code 88 . . .” In reviewing the cited figures and passage, it appears that the Office Action has tried to equate the claimed *first computer fingerprint file* with a meter identification code. However, the cited figures and passage are silent with respect to the claimed *second computer fingerprint file* and *comparing the first computer fingerprint file against a second computer fingerprint file to verify the user computer*. As such, Archibald does not disclose the claim 16 feature of “*comparing the first computer fingerprint file, identifying the user computer, against a second computer fingerprint file, to verify the user computer . . . second computer fingerprint file including at least one identifying characteristic of a user computer.*”

The Office Action has failed to discuss, and Applicant could not find any passage in either Padgett or Archibald that discloses, the claim 16 feature of “*sending at least one verification response to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file and upon the comparing of the first identification for the user against the second identification for the user.*” What Archibald sends is merely a “usage message.” Specifically, Archibald “determines whether an authority exists for the particular publisher identified . . . generates a usage message and subsequently sends that message to the authority”³ Clearly, the usage message sent to an authority cannot be equated with the claimed *verification response sent to the computer, based upon the comparing of the first computer fingerprint file against the second computer fingerprint file*.

² Archibald, col. 3, line 36-40

³ Archibald, col. 19, line 10-23

The Office Action at page 3, last paragraph, states:

“Padgett et al ('518) discloses the claimed invention except for a second fingerprint file, it would have been obvious to one having ordinary skill in the art at the time the invention was made [to] use a second fingerprint file, since it has been held that mere duplication of the essential working parts of a device involves only routine skill in the art.”

Applicant respectfully traverses the assertion and submits that the difference between Padgett's disclosures and the subject matter of claim 16, as shown in Applicant's response to previous Office Actions, exceeds, and is more significant than, just a *second fingerprint file*.

Accordingly, Padgett and Archibald, individually or in the combination, fail to teach or suggest each and every element of claim 16. Applicant respectfully submits that the difference between the claimed subject matter of claim 16 and the disclosures in Padgett and Archibald is significant and non-obvious to a person of ordinary skill in the art at the time the application was filed. Moreover, disclosures in neither Padgett nor Archibald provides any reason for a person of ordinary skill in the art to seek to combine the teaching of Padgett and Archibald. As such, at least for the reasons set forth above, claim 16 and its dependent claims 17- 33 are not rendered obvious by the combination of Padgett and Archibald and, thus, are allowable.

The same argument as presented with respect to claim 16 are also applicable to a consideration of independent claim 16. Accordingly, at least for the reasons articulated above with respect to claim 16, claim 34, and its dependent claims 35-39 are not made obvious by the combination of Padgett and Archibald and are believed to be allowable.

Therefore, Applicant respectfully requests that, in view of the presented arguments, the claim rejections under 35 U.S.C. § 103(a) be withdrawn.

CONCLUSION

Applicant respectfully submits that the claims are in condition for allowance, and notification to that effect is earnestly requested. The Examiner is invited to telephone Applicant's attorney at 408-278-4053 to facilitate prosecution of this application.

If necessary, please charge any additional fees or credit overpayment to Deposit Account No. 19-0743.

Respectfully submitted,

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Date April 23, 2008

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CERTIFICATE UNDER 37 CFR 1.8: The undersigned hereby certifies that this correspondence is being filed using the USPTO's electronic filing system EFS-Web, and is addressed to: Mail Stop Amendment, Commissioner of Patents, P.O. Box 1450, Alexandria, VA 22313-1450 on this 23rd day of April 2008.

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Signature